

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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REGISTRATION NO. _____

INTERSTATE COMMERCE COMMISSION

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SOUTHERN RAILWAY COMPANY

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This *EQUIPMENT TRUST AGREEMENT*, dated as of May 15, 1972, between MANUFACTURERS HANOVER TRUST COMPANY, a New York corporation, as Trustee (hereinafter called the Trustee) and SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Company);

Witnesseth:

Whereas, the Company has contracted or will contract for the construction and transfer to the trustee of the railroad equipment described herein; and

Whereas, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

Whereas, *Southern Railway Equipment Trust No. 3 of 1972 Equipment Trust Certificates* (hereinafter called Trust Certificates) are to be issued and sold in an aggregate principal amount not exceeding \$11,025,000, and the net proceeds (as hereinafter defined) of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as *Southern Railway Equipment Trust No. 3 of 1972*, to be applied by the Trustee from time to time in part payment of the Cost (as hereinafter defined) of the Trust Equipment (as hereinafter defined), the remainder of the Cost thereof to be paid out of advance rentals to be paid by the

Company as provided herein, said net proceeds to be applied also in repayment of any excess of said advance rentals paid by the Company as provided herein over said remainder of the Cost; and

Whereas, the texts of the Trust Certificates, the dividend warrants to be attached to Trust Certificates with dividend warrants, and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms:

[FORM OF FULLY REGISTERED TRUST CERTIFICATE]

\$ No. R —

SOUTHERN RAILWAY EQUIPMENT TRUST
No. 3 of 1972

Equipment Trust Certificate

Total Authorized Issue \$11,025,000

Manufacturers Hanover Trust Company,
Trustee

Dividends at the rate of % Per Annum Payable
November 15 and May 15

Principal hereof payable

Manufacturers Hanover Trust Company as Trustee
(hereinafter called the Trustee) under an Equipment Trust
Agreement dated as of May 15, 1972 (hereinafter called the

Agreement), between the Trustee and *Southern Railway Company*, a Virginia corporation (hereinafter called the Company), hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of _____ Dollars in *Southern Railway Equipment Trust No. 3 of 1972*, payable on _____, upon presentation and surrender of this Certificate to the Trustee at its corporate trust office in the Borough of Manhattan, The City and State of New York, and to payment, until said last mentioned date, of dividends on said principal amount at the rate of _____ % per annum from the date hereof, semi-annually on November 15 and May 15 in each year, by check mailed by the Trustee to the order of or as directed by the registered Holder or registered assigns, with interest at _____ % on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Equipment Trust Certificates (hereinafter called the Certificates) in an aggregate principal amount not exceeding \$11,025,000, all of which are substantially similar except as to serial number and date of maturity, all issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Government Securities" in lieu thereof as provided in the Agreement) is held by the Trustee in trust for

the equal and ratable benefit of the bearers and registered holders of the Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office in the Borough of Manhattan, The City and State of New York) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the registered Holder hereof thereunder, and to all of which the registered Holder hereof, by accepting this Certificate, assents.

The Certificates are issuable as Certificates with dividend warrants attached, registrable as to principal, in the denomination of \$1,000, and as fully registered Certificates in denominations of \$1,000 and any multiple of \$1,000. The Certificates with dividend warrants and the fully registered Certificates are interchangeable upon presentation thereof at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Agreement.

This Certificate is a fully registered Certificate transferable by the registered Holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender hereof to the Trustee at its said office, accompanied by appropriate instrument of assignment and transfer, duly executed by the registered Holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Certificate or Certificates in authorized denominations for the same aggregate principal amount and having the same date of maturity will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer of this Certificate, the Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of

principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Certificate may be declared due and payable, as provided in the Agreement.

This Certificate shall not be deemed in any way a promise to pay of the Trustee.

In Witness Whereof, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Assistant Vice Presidents and its corporate seal, in facsimile, to be hereunto affixed, and to be attested by one of its Assistant Secretaries.

Dated as of

Manufacturers Hanover Trust Company,
Trustee,

By
Assistant Vice President

Attest:

.....
Assistant Secretary

[FORM OF GUARANTY FOR FULLY REGISTERED TRUST CERTIFICATE]

Southern Railway Company, for valuable consideration, hereby unconditionally guarantees to the registered Holder of the within Certificate, the prompt payment of the principal of said Certificate, and of the dividends thereon specified in said Certificate, with interest at % on any unpaid principal

and on any unpaid dividends to the extent that it shall be legally enforceable, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

Southern Railway Company,

By
Executive Vice President

[FORM OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

\$1,000

No. M ...

SOUTHERN RAILWAY EQUIPMENT TRUST
No. 3 of 1972

Equipment Trust Certificate

Total Authorized Issue \$11,025,000

Manufacturers Hanover Trust Company,
 Trustee

Dividends at the Rate of % Per Annum Payable
 November 15 and May 15

Manufacturers Hanover Trust Company, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of May 15, 1972 (hereinafter called the Agreement), between the Trustee and *Southern Railway Company*, a Virginia corporation (hereinafter called the Company), hereby certifies that the bearer, or, if this Certificate is registered as to principal, the registered Holder hereof, is

entitled to an interest in the principal amount of One Thousand Dollars (\$1,000) in *Southern Railway Equipment Trust No. 3 of 1972*, payable on _____ upon presentation and surrender of this Certificate to the Trustee at its corporate trust office in the Borough of Manhattan, The City and State of New York, and to payment, until said last mentioned date, of dividends on said principal amount at the rate of _____ % per annum from May 15, 1972, semi-annually on November 15 and May 15 in each year, according to the tenor of the dividend warrants hereto annexed, upon presentation and surrender of such warrants, as they severally mature, to the Trustee at its said office, with interest at _____ % on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Equipment Trust Certificates (hereinafter called the Certificates) in an aggregate principal amount not exceeding \$11,025,000, all of which are substantially similar except as to serial number and date of maturity, all issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Government Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the bearers and registered Holders of the Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office in the Borough of Manhattan, The City and State of New York) reference is made for a full statement of the rights and

obligations of the Company, the duties and immunities of the Trustee and the rights of the Holder hereof thereunder, and to all of which the bearer or registered Holder hereof, by accepting this Certificate, assents.

The Certificates are issuable as Certificates with dividend warrants attached, registrable as to principal, in the denomination of \$1,000, and as fully registered Certificates in denominations of \$1,000 and any multiple of \$1,000. The Certificates with dividend warrants and the fully registered Certificates are interchangeable upon presentation thereof at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Agreement.

This Certificate is a Certificate with dividend warrants attached, transferable by delivery unless registered as to principal at the said office of the Trustee in the Borough of Manhattan, The City and State of New York, in the name of the Holder hereof, such registration being noted hereon by or on behalf of the Trustee. After such registration, title to the interest represented by this Certificate shall pass only by transfer registered at said office by the registered Holder hereof in person or by duly authorized attorney and similarly noted hereon unless and until a transfer to bearer shall have been similarly registered and noted hereon. Such registration shall apply only to the principal of this Certificate and not to the dividend warrants hereunto attached, which shall continue to be payable to bearer and transferable by delivery.

The Trustee and the Company may treat the bearer of this Certificate, or, prior to due presentment for registration of transfer, the registered Holder hereof if this Certificate be registered as to principal as above provided, and the bearer of

any dividend warrant attached hereto, whether or not this Certificate be so registered, as the absolute owner of this Certificate or of said warrant, as the case may be, for all purposes, and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Certificate may be declared due and payable, as provided in the Agreement.

Neither this certificate nor the dividend warrants attached shall be deemed in any way a promise to pay of the Trustee.

In witness whereof, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Assistant Vice Presidents and its corporate seal, in facsimile, to be hereunto affixed, and to be attested by one of its Assistant Secretaries and has caused dividend warrants bearing the facsimile signature of one of its Assistant Vice Presidents to be attached hereto, as of the 15th day of May, 1972.

Manufacturers Hanover Trust Company,
Trustee,

By
Assistant Vice President

Attest:

.....
Assistant Secretary

**[FORM OF DIVIDEND WARRANT FOR TRUST CERTIFICATE
WITH DIVIDEND WARRANTS]**

\$

No.

Due to the bearer hereof on the fifteenth day of
, 19 , on surrender hereof at the

corporate trust office of the undersigned Trustee in the Borough of Manhattan, The City and State of New York, the amount shown hereon, being the semi-annual dividend then due on Equipment Trust Certificate No. M of *Southern Railway Equipment Trust No. 3 of 1972*, payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Equipment Trust Agreement referred to in said Equipment Trust Certificate.

Manufacturers Hanover Trust Company,
Trustee,

By
Assistant Vice President

**[FORM OF GUARANTY FOR TRUST CERTIFICATE WITH
DIVIDEND WARRANTS]**

Southern Railway Company, for a valuable consideration, hereby unconditionally guarantees to the bearer or registered Holder of the within Certificate, and to the bearer or bearers of the dividend warrants appertaining thereto, respectively, the prompt payment of the principal of said Certificate, and of the dividends thereon specified in the said dividend warrants, with interest at % on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

Southern Railway Company,

By
Executive Vice President

; and

guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate and dividend warrants, if any, alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate and dividend warrants, if any, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates and dividend warrants shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and dividend warrants, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

Section 2.7. *Temporary Trust Certificates.* At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and deliver at the Principal Office of the Trustee, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such Request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with or without dividend warrants and with such insertions, omissions, substitutions and variations as may be appropriate.

Temporary Trust Certificates shall be exchangeable at the Principal Office of the Trustee, without charge to the Holder, for the definitive Trust Certificates in lieu of which they are issued, and upon surrender and cancellation of any of such temporary Trust Certificates, the Trustee shall issue and deliver

in exchange therefor definitive Trust Certificates, of the same maturity and dividend rate, for the same aggregate principal amount. Until so exchanged, the Holders of the temporary Trust Certificates shall be entitled to the same rights hereunder as if the temporary Trust Certificates had been so exchanged.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee; Deposited Cash

Section 3.1. *Acquisition of Trust Equipment by Trustee.* The Company shall promptly cause to be constructed and shall promptly cause to be sold, assigned, transferred and set over unto the Trustee as trustee for the Holders the Equipment described in Schedule A hereto, or substitutions therefore as hereinafter provided.

To that end the Company hereby assigns, or promptly after entering into the contract or contracts for the construction and sale of the Equipment agrees to assign, to said Trustee all its right, title and interest under said contract or contracts. Such Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other Equipment in lieu of any of the Equipment specifically described in Schedule A hereto prior to the delivery of such Equipment to the Trustee or its agent, the Company may cause such other Equipment to

be constructed and to be sold, assigned, transferred and set over unto the Trustee, to be substituted under the trust hereby created, and to that end the Company, upon entering into a contract or contracts for the construction of such other Equipment, shall assign to the Trustee all its right, title and interest under the said contract or contracts.

Section 3.2. *Payments out of Deposited Cash.* From time to time, after any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article Three, the Trustee shall (subject, however, to the provisions of Section 3.3) pay to the builder of the delivered Trust Equipment, upon Request, out of the Deposited Cash, an amount which, together with all payments previously made out of the Deposited Cash upon deliveries of Trust Equipment, will equal not more than 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

Section 3.3. *Payments of and from Advance Rental.* The Company covenants that, contemporaneously with the delivery to the Trustee of the documents required by Section 3.4 in respect of any delivery of Trust Equipment, the Company will pay to the Trustee the advance rental provided in Section 4.4(A)(2), and thereupon the Trustee shall pay to the builder of the delivered Trust Equipment, upon Request, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.2. It is the intention of the parties hereto that the Company shall ultimately pay as such advance rental not less than 20% of the final Cost of all the Trust Equipment, and the Trustee and the Company shall from time to time adjust their accounts and payments accordingly, and the Trustee, upon Request, shall pay to the Company from Deposited Cash, if the Company shall not be in default under the terms hereof or of

ARTICLE FIVE

Remedies in Event of Default

Section 5.1. *Events of Default.* The Company covenants and agrees that in case

(A) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall become due and payable, or

(B) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or suffer any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with or suffer the loss of the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value, as of the date of such unauthorized action, of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(C) the Company shall, for more than 90 days after the

Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 4.4 and not theretofore paid, whereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Interest Rate to the extent legally enforceable on any portion thereof overdue.

In addition, in case one or more of the Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

The Trustee shall be entitled and empowered to institute any action or proceedings at law or in equity to recover judgment for the total amount becoming payable by the Company as aforesaid, together with interest at the Penalty Interest Rate

thereon to the extent legally enforceable, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

Section 5.2. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate or sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of the rentals payable by the Company as provided for in Section 5.1) may sell the same or any part thereof, free from all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust created hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at

the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, or any part thereof, the Company shall cease to have any rights or remedies in respect of the Trust Equipment, or such part, hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or such part shall, in case of the happening of any such Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or such part thereof, or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the Holders. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.4 (other than dividends or interest not then accrued) whether or not they shall have then matured. The Holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

Section 5.3. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.1 and 5.2, all

payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or dividend warrants), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest at the Penalty Interest Rate on overdue dividends to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Interest Rate to the extent legally enforceable from the date of any declaration by the Trustee under Section 5.1, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and dividends.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

Section 5.4. *Waiver of Default.* If at any time after the principal of all the Trust Certificates shall have been declared, and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.1 provided, but before May 15, 1987, all arrears of rent (with interest at the Penalty Interest Rate upon any overdue instalments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the Holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall, by written notice to the Company, waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 5.5. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, not any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or

appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the Holders may be materially endangered thereby.

Section 4.5. *Termination of Lease.* At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for all Trust Certificates and dividend warrants and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust Equipment shall vest in the Company, and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however*, that until that time, title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to, and the possession and use thereof by, the Company.

Section 4.6. *Marking of Trust Equipment.* The Company agrees that at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or

guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate and dividend warrants, if any, alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate and dividend warrants, if any, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates and dividend warrants shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and dividend warrants, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

Section 2.7. *Temporary Trust Certificates.* At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and deliver at the Principal Office of the Trustee, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such Request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with or without dividend warrants and with such insertions, omissions, substitutions and variations as may be appropriate.

Temporary Trust Certificates shall be exchangeable at the Principal Office of the Trustee, without charge to the Holder, for the definitive Trust Certificates in lieu of which they are issued, and upon surrender and cancellation of any of such temporary Trust Certificates, the Trustee shall issue and deliver

in exchange therefor definitive Trust Certificates, of the same maturity and dividend rate, for the same aggregate principal amount. Until so exchanged, the Holders of the temporary Trust Certificates shall be entitled to the same rights hereunder as if the temporary Trust Certificates had been so exchanged.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee; Deposited Cash

Section 3.1. *Acquisition of Trust Equipment by Trustee.* The Company shall promptly cause to be constructed and shall promptly cause to be sold, assigned, transferred and set over unto the Trustee as trustee for the Holders the Equipment described in Schedule A hereto, or substitutions therefore as hereinafter provided.

To that end the Company hereby assigns, or promptly after entering into the contract or contracts for the construction and sale of the Equipment agrees to assign, to said Trustee all its right, title and interest under said contract or contracts. Such Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other Equipment in lieu of any of the Equipment specifically described in Schedule A hereto prior to the delivery of such Equipment to the Trustee or its agent, the Company may cause such other Equipment to

be constructed and to be sold, assigned, transferred and set over unto the Trustee, to be substituted under the trust hereby created, and to that end the Company, upon entering into a contract or contracts for the construction of such other Equipment, shall assign to the Trustee all its right, title and interest under the said contract or contracts.

Section 3.2. *Payments out of Deposited Cash.* From time to time, after any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article Three, the Trustee shall (subject, however, to the provisions of Section 3.3) pay to the builder of the delivered Trust Equipment, upon Request, out of the Deposited Cash, an amount which, together with all payments previously made out of the Deposited Cash upon deliveries of Trust Equipment, will equal not more than 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

Section 3.3. *Payments of and from Advance Rental.* The Company covenants that, contemporaneously with the delivery to the Trustee of the documents required by Section 3.4 in respect of any delivery of Trust Equipment, the Company will pay to the Trustee the advance rental provided in Section 4.4(A)(2), and thereupon the Trustee shall pay to the builder of the delivered Trust Equipment, upon Request, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.2. It is the intention of the parties hereto that the Company shall ultimately pay as such advance rental not less than 20% of the final Cost of all the Trust Equipment, and the Trustee and the Company shall from time to time adjust their accounts and payments accordingly, and the Trustee, upon Request, shall pay to the Company from Deposited Cash, if the Company shall not be in default under the terms hereof or of

ARTICLE FIVE

Remedies in Event of Default

Section 5.1. *Events of Default*. The Company covenants and agrees that in case

(A) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall become due and payable, or

(B) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or suffer any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with or suffer the loss of the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value, as of the date of such unauthorized action, of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(C) the Company shall, for more than 90 days after the

Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 4.4 and not theretofore paid, whereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Interest Rate to the extent legally enforceable on any portion thereof overdue.

In addition, in case one or more of the Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

The Trustee shall be entitled and empowered to institute any action or proceedings at law or in equity to recover judgment for the total amount becoming payable by the Company as aforesaid, together with interest at the Penalty Interest Rate

thereon to the extent legally enforceable, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

Section 5.2. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate or sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of the rentals payable by the Company as provided for in Section 5.1) may sell the same or any part thereof, free from all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust created hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at

the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, or any part thereof, the Company shall cease to have any rights or remedies in respect of the Trust Equipment, or such part, hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or such part shall, in case of the happening of any such Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or such part thereof, or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the Holders. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.4 (other than dividends or interest not then accrued) whether or not they shall have then matured. The Holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

Section 5.3. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.1 and 5.2, all

payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or dividend warrants), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest at the Penalty Interest Rate on overdue dividends to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Interest Rate to the extent legally enforceable from the date of any declaration by the Trustee under Section 5.1, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and dividends.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

Section 5.4. *Waiver of Default.* If at any time after the principal of all the Trust Certificates shall have been declared, and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.1 provided, but before May 15, 1987, all arrears of rent (with interest at the Penalty Interest Rate upon any overdue instalments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the Holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall, by written notice to the Company, waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 5.5. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, not any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or

appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the Holders may be materially endangered thereby.

Section 4.5. *Termination of Lease.* At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for all Trust Certificates and dividend warrants and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust Equipment shall vest in the Company, and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however*, that until that time, title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to, and the possession and use thereof by, the Company.

Section 4.6. *Marking of Trust Equipment.* The Company agrees that at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or

such words may be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one-half inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT RECORDED WITH THE INTERSTATE COMMERCE COMMISSION UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which shall previously have been executed by the Trustee and the Company, and filed and recorded as provided in Section 6.4.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or of any Affiliate which is permitted to use the Trust Equipment as herein provided, or may be lettered in some other appropriate manner for convenience of identification of the interest of the Company or such Affiliate therein. Except as aforesaid, during the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation if the right, title and interest of the Trustee therein would thereby be impaired or invalidated. The Trustee shall, upon Request, consent to the placing of the name of any specified person, association or corporation upon any unit of Trust Equipment as

a designation if there shall have been delivered to the Trustee an Opinion of Counsel to the effect that such designation will not impair or invalidate the right, title and interest of the Trustee in or to such unit.

Section 4.7. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense. Whenever any of the Trust Equipment shall be lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall promptly, after obtaining notice of such Casualty Occurrence, deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the then Fair Value thereof and shall deposit with the Trustee an amount in cash equal to such Fair Value. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.7 shall be held and applied as provided in Section 4.9.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and on or before September 30 in every calendar year commencing with the year 1973, and during the continuance of the lease provided for herein, an Officer's Certificate stating, as of the preceding June 30, (a) the amount, description and numbers of all the Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (b) the amount, description and numbers of all the Trust Equipment then undergoing repairs,

other than running repairs, or then withdrawn from use for such repairs, and stating that, in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the plates or marks required by Section 4.6 have been preserved, or that the same when repainted or repaired has been again plated or marked as required thereby and (c) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at the Company's expense, the Trust Equipment, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

Section 4.8. *Possession of Trust Equipment; Assignments.* The Company, so long as an Event of Default shall not have occurred and be continuing, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company, and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by an Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other railroads in the usual interchange of traffic and upon connecting railroads and other railroads over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company shall not, without the prior written consent of the Trustee, assign or transfer, or suffer or allow to be assigned or transferred, its rights hereunder or transfer or sublet, or suffer or allow to be transferred or sublet, the Trust Equipment

or any part thereof except, and then only so long as the Company shall not then be in default under this Agreement (and only subject to this Agreement and to the rights of the Trustee hereunder, and without releasing the Company from its obligations hereunder), to an Affiliate or, under a written sublease for a term not exceeding one year (including all renewal or extension options reserved to the sublessee or sublessor), to a railroad classified by the Interstate Commerce Commission as a Class I railroad or to a responsible industry, as determined by the Company; and the Company shall not, without such written consent, except as provided in this Section 4.8, part with the possession, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Trustee in respect of the Trust Equipment covered by such sublease in the event of the happening of an Event of Default.

An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all of the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization, or a trustee or trustees in bankruptcy or reorganization for the Company or for its property shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the

Company hereunder and under the guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the rights of the Company hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

Section 4.9. *Release and Replacement of Trust Equipment.* Any units of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of, or are no longer needed by, the Company may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company, the Trustee will release any such units of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become worn out or unsuitable for the use of, or are no longer needed by, the Company, shall state the selling price thereof, and shall specify the Cost and the then Fair Value thereof. No such release shall be made unless and until the Company shall have paid to the Trustee such selling price or Fair Value, whichever shall be greater.

Any moneys paid to the Trustee pursuant to this Section 4.9 or Section 4.7 (such moneys being herein called Replacement Funds), shall be received and held by the Trustee in trust hereunder pending delivery of additional Equipment and may be invested and reinvested as provided in Section 7.7. Upon the

filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of such Equipment to be purchased and the Cost and the Fair Value thereof, such moneys in an amount not exceeding the lesser of Cost or Fair Value, shall, upon receipt by the Trustee or certificates, bills of sale and Opinions of Counsel, all in like manner as is provided in Section 3.4, be applied to the purchase of such Equipment.

Section 4.10. *Company's Indemnities.* The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Department of Transportation, the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the Holders. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

Remedies in Event of Default

Section 5.1. *Events of Default.* The Company covenants and agrees that in case

(A) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall become due and payable, or

(B) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or suffer any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with or suffer the loss of the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value, as of the date of such unauthorized action, of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(C) the Company shall, for more than 90 days after the

Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 4.4 and not theretofore paid, whereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Interest Rate to the extent legally enforceable on any portion thereof overdue.

In addition, in case one or more of the Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

The Trustee shall be entitled and empowered to institute any action or proceedings at law or in equity to recover judgment for the total amount becoming payable by the Company as aforesaid, together with interest at the Penalty Interest Rate

thereon to the extent legally enforceable, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

Section 5.2. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate or sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of the rentals payable by the Company as provided for in Section 5.1) may sell the same or any part thereof, free from all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust created hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at

the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, or any part thereof, the Company shall cease to have any rights or remedies in respect of the Trust Equipment, or such part, hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or such part shall, in case of the happening of any such Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or such part thereof, or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the Holders. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.4 (other than dividends or interest not then accrued) whether or not they shall have then matured. The Holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

Section 5.3. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.1 and 5.2, all

payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or dividend warrants), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest at the Penalty Interest Rate on overdue dividends to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Interest Rate to the extent legally enforceable from the date of any declaration by the Trustee under Section 5.1, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and dividends.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

Section 5.4. *Waiver of Default.* If at any time after the principal of all the Trust Certificates shall have been declared, and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.1 provided, but before May 15, 1987, all arrears of rent (with interest at the Penalty Interest Rate upon any overdue instalments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the Holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall, by written notice to the Company, waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 5.5. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, not any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or

on the part of any Holder, nor any delay or indulgence granted to the Company by the Trustee or by any such Holder, shall affect the obligations of the Company hereunder or under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and dividend warrants and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

Section 5.6. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate for the delivery of the Trust Equipment to it, the Company shall, at its own expense forthwith and in the usual manner, cause the Trust Equipment to be moved to such point or points on such railroads as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, without charge for rent or storage, the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

Section 5.7. *Limitations on Actions By Holders.* No Holder shall have any right to institute any action or proceedings at law or in equity for the execution and enforcement of the trust

hereby created unless, after the request in writing, under Section 7.5, by the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfactory to it shall have been provided, and after 90 days shall have elapsed after receipt by the Trustee of such request, the Trustee shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 5.7 nor the provisions of Section 7.5 shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the Holders to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates or dividend warrants.

Section 5.8. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the Holders shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SIX

Additional Covenants and Agreements by the Company

Section 6.1. *Company to Make Payments Provided for.* The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the rentals and of the other amounts provided for herein.

Opinion or Opinions of Counsel with respect thereto.

Section 6.5. *Further Assurances.* The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

The Trustee

Section 7.1. *Acceptance of Trusts.* The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

Section 7.2. *Application of Rentals.* The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 4.4(B) [other than sums restored to Deposited Cash or Replacement Funds from rentals pursuant to Section 4.4(B)(1)] when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purpose specified in Section 4.4(B).

Section 7.3. *Duties Concerning Registration, Exchange and Transfer of Trust Certificates.* The Trustee shall cause to be kept at its Principal Office, books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, or discharge from registration, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable

regulations as it may prescribe, any of the Trust Certificates.

Section 7.4. *Insuring or Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents.* The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the Holders against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or of any other instrument or document which may be required to perfect the right, title and interest of the Trustee in the contracts assigned to it pursuant to Section 3.1. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Sections 3.4, 4.7 or 4.9, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

Section 7.5. *No Obligation to Enforce Trust unless Requested and Indemnified; Enforcement by Trustee.* The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expenses and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of

Opinion or Opinions of Counsel with respect thereto.

Section 6.5. *Further Assurances.* The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

The Trustee

Section 7.1. *Acceptance of Trusts.* The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

Section 7.2. *Application of Rentals.* The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 4.4(B) [other than sums restored to Deposited Cash or Replacement Funds from rentals pursuant to Section 4.4(B)(1)] when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purpose specified in Section 4.4(B).

Section 7.3. *Duties Concerning Registration, Exchange and Transfer of Trust Certificates.* The Trustee shall cause to be kept at its Principal Office, books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, or discharge from registration, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable

regulations as it may prescribe, any of the Trust Certificates.

Section 7.4. *Insuring or Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents.* The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the Holders against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or of any other instrument or document which may be required to perfect the right, title and interest of the Trustee in the contracts assigned to it pursuant to Section 3.1. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Sections 3.4, 4.7 or 4.9, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

Section 7.5. *No Obligation to Enforce Trust unless Requested and Indemnified; Enforcement by Trustee.* The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expenses and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of

the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders parties to such proceedings.

Section 7.6. Assumption of No Default; May Rely on Notices and Other Documents. The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the Holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the Event of Default desired to be brought to the attention of the Trustee. As to any fact or matter, the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any Request, notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be

remaining on deposit with the Trustee will be repaid to the Company. In no event shall the Holders be entitled to interest upon such moneys whether held by the Trustee or so repaid to the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the Holders.

Section 7.9. *Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a national bank, or a state bank or trust company, qualified as below specified, to serve until a successor is appointed by the Holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Government Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the

retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the Holders of the majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

Section 7.10. *Merger, Consolidation or Conversion of Trustee.* Any corporation resulting from any merger, consolidation, or conversion to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation

shall be a national bank, or a state bank or trust company, having trust powers, qualified as above specified in the case of a successor Trustee, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE EIGHT

Miscellaneous

Section 8.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by Holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner:

(A) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is by a

remaining on deposit with the Trustee will be repaid to the Company. In no event shall the Holders be entitled to interest upon such moneys whether held by the Trustee or so repaid to the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the Holders.

Section 7.9. *Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a national bank, or a state bank or trust company, qualified as below specified, to serve until a successor is appointed by the Holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Government Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the

retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the Holders of the majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

Section 7.10. *Merger, Consolidation or Conversion of Trustee.* Any corporation resulting from any merger, consolidation, or conversion to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation

shall be a national bank, or a state bank or trust company, having trust powers, qualified as above specified in the case of a successor Trustee, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE EIGHT

Miscellaneous

Section 8.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by Holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner:

(A) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof. Where such execution is by a

person acting in other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.

(B) The amount and serial numbers of Trust Certificates with dividend warrants not registered as to principal held by any person executing any such request or other instrument as a Holder of Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depository, wheresoever situated, whose certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with or exhibited to such depository the Trust Certificates with dividend warrants numbered and described in such certificate. The Trustee may presume the continuance of any such holding unless and until it shall receive proof satisfactory to it to the contrary.

(C) The ownership of fully registered Trust Certificates and Trust Certificates with dividend warrants registered as to principal shall be determined by the registry books to be kept as provided in Section 7.3.

Section 8.2. *Rights Limited to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the Holders, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Holders.

Section 8.3. *Binding Upon Successors and Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

Section 8.4. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at Post Office Box 1808, Washington, D. C. 20013, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, 40 Wall Street, New York, New York 10015, Attention: Corporate Trust Department, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

Section 8.5. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 8.6. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Company who signed it on behalf of the Company.

Section 8.7. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 8.8. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

In Witness Whereof, the Trustee and the Company have caused their names to be signed hereto by their officers thereunto duly authorized and their corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

Manufacturers Hanover Trust Company,
Trustee.

By

[Signature]
Assistant Vice President

[Seal]

Attest:

[Signature]
Assistant Secretary

Southern Railway Company,

By *K. A. Flecker*

[Seal]

Attest:

[Signature]
Assistant Secretary

State of New York }
County of New York }

ss:

On this 11th day of May, 1972, before me personally appeared L. E. [unclear], to me personally known, who, being by me duly sworn, says he is an Assistant Vice President of *Manufacturers Hanover Trust Company*, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John E. [unclear]
JOHN E. [unclear]
Notary Public, State of New York

[Notarial Seal]
District of Columbia:

On this 12th day of May, 1972, before me personally appeared K. A. Stoecker to me personally known, who, being by me duly sworn, says he is a Vice President of *Southern Railway Company*, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Lawrence A. Huff
LAWRENCE A. HUFF
NOTARY PUBLIC
IN AND FOR THE DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JUNE 30, 1972

SCHEDULE A

Description of Trust Equipment

No. of Units	Description	Estimated Cost	
		Per Unit	Total
250	70-ton 50' 6" Double Door Box Cars, Pullman Incorporated (Pullman-Standard division), builder, to be numbered 524350 to 524599, inclusive	\$ 16,787.30	\$ 4,195,825.00
14	GP38 Diesel-Electric Locomotives, Gen- eral Motors Corporation (Electro-Motive Division), builder, to be numbered 5000 and 5042 to 5054, inclusive	(1) \$ 268,000.00 (13) \$ 267,857.00	\$ 3,750,141.00
10	SD40 Diesel-Electric Locomotives, Gen- eral Motors Corporation (Electro-Motive Division), builder, to be numbered 3191 to 3200, inclusive	\$ 308,500.00	\$ 3,085,000.00
00	100-ton 3,600 cu. ft. capacity Open-Top Hopper Cars, Greenville Steel Car Company, builder, to be numbered 78300 to 78399, inclusive	\$ 16,066.46	\$ 1,606,646.00
5	U-23-B Diesel-Electric Locomotives, Gen- eral Electric Company, builder, to be numbered 3900 to 3904, inclusive	\$ 282,000.00	\$ 1,410,000.00
TOTAL			\$ 14,048,612.00